

MAY 16 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE RODRIGO LOPEZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70024

Agency No. A14-102-554

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 12, 2008^{**}

Before: KOZINSKI, Chief Judge, THOMAS and CALLAHAN, Circuit Judges.

The motion to proceed in forma pauperis is granted. The Clerk shall amend the docket to reflect this status.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Jose Rodrigo Lopez petitions for review of the Board of Immigration Appeals' ("BIA") order finding him removable and ineligible for relief under Section 212(c) on account of his conviction for first degree child molestation under Section 9A.44.083 of the Revised Code of Washington. The Immigration Judge and BIA found that the conviction was for sexual abuse of a minor and was thus an aggravated felony under 8 U.S.C. § 1101(a)(43)(A).

Respondent's unopposed motion to dismiss is construed as a motion for summary disposition, and, so construed, the motion is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

Petitioner's sole contention is that because he spent 6 months in confinement, his actual sentence was only 6 months and that his conviction is thus not an aggravated felony; petitioner does not dispute that he received a 68 month sentence. Under the statute, the term of imprisonment refers to the sentence imposed by the sentencing court regardless of a partial or total suspension of that sentence. *See* 8 U.S.C. § 1101(a)(48)(B). Moreover, the statute does not require

that the term of imprisonment be at least one year when the aggravated felony is sexual abuse of a minor. *See* 8 U.S.C. § 1101(a)(43)(A).

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.